

MHAU160032242025



Presented on : 14-09-2018

Registered on : 14-09-2018

Decided on : 18-03-2026

Duration:- 07 Years, 06 Months, 4 Days

Special Case No.684 of 2025**Exh.70-A****Form No. XXXII****Part 'A'**

(Title Page of Judgment)

(Para 44(i) of Chapter VI of Criminal Manual)

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE, GANGAPUR,
TAL. GANGAPUR, DISTRICT – CHHATRAPATI-SAMBHAJINAGAR**

**Present : S.B. Bahalkar, Additional Sessions Judge/ Special Judge
under POCSO Act.**

(Judgment date :- 18.03.2026)

(Special Case No.684 of 2025)

Old Special Case No.17/2018

FIR No.11/2017, under Section 354 read with Sec.34 of the
Indian Penal Code and under Sections 8 and 12 of the
Protection of Children from Sexual Offences Act, 2012- Waluj
Police Station, Tq. Gangapur, Dist. Chh. Sambhajinagar

Complainant	STATE OF MAHARASHTRA, Through The Police Inspector, Waluj Police Station, Tq. Gangapur, Dist. Chh. Sambhajinagar
REPRESENTED BY	Mr. A. U. Ankush, Learned A.P P for the State
ACCUSED	[1] Ganesh Namdev Bhalerao

	Age:- 22 Years, Occu:- Labour [2] Manoj Santosh Patil, Age:- 21 Years, Occu:- Labour, Above all R/o:- Sathenagar, Waluj, Tq. Gangapur, Dist. Chh. Sambhajinagar
REPRESENTED BY	Mr. S. B. Sawant, learned Advocate for the Accused.

Part -'B'
(Para 44(ii) of Chapter VI of Criminal Manual)

Date of offence	14.01.2017
Date of FIR	14.01.2017
Date of Charge-sheet	19.06.2017
Date of FrSing of Charges	16.03.2023
Date of commencement of evidence	12.02.2024
Date on which judgment is reserved	13.03.2026
Date of the Judgment	18.03.2026
Date of the Sentencing Order, if any	–

Accused Details

Rank of the Accused	NSe of Accused	Date of Arrest	Date of Release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention Undergone during Trial for purpose of Section 428, Cr.P.C.
(1)	Ganesh Namdev Bhalerao	21.02.2017	04.05.2017	under Sections 354 read with Sec.34 of the IPC and under Sections 8 and 12 of the POCSO Act	Acquitted	–	–
(2)	Manoj Santosh Patil,	17.06.2017	07.07.2017		Acquitted	–	–

JUDGMENT
(Delivered on 18.03.2026)

Both the accused in furtherance of their common intention assaulted or used criminal force to the victim girl

intending to outrage her modesty. Hence, the accused are facing trial for the offences punishable under Section 354 read with Sec.34 of the Indian Penal Code (in short 'IPC') and under Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO' Act).

[2] Brief facts of the prosecution case are as under :-

In the year 2017 the victim girl along with her parents was residing at Waluj. Both the accused were also residing in the same vicinity.

[3] On 14.01.2017 at about 05:00 p.m. the victim girl along with her female friend – “R” had been in front of her house and they were talking to each other. Suddenly, both the accused case there on motorcycle. They stopped near the victim girl. At that time, accused No.1- Ganesh said accused No.2- Manoj that “See the item residing in his lane and he will kiss her in his presence”. Then, accused Ganesh stepped down from the motorcycle and caught hold neck of the victim girl and kissed her. He also pressed her breast. Due to this act of the accused persons the victim girl felt ashamed. She shouted for help, at that time, her mother and mother of the other girl – “R” came there. However, by that time, both the accused fled away.

[4] On the same day, the victim girl lodged FIR against both the accused. Accordingly, crime vide C.R.No.11/2017

under Sections 354 read with Sec.34 of the IPC and under Sections 8 and 12 of the POCSO Act, came to be registered and handed over to PSI - Tayade for investigation.

[5] During the investigation, PSI - Tayade visited to the spot of the incident and prepared panchanama of the spot. He got recorded statements of the victim girl under Sec.164 of the Code of Criminal Procedure. Thereafter, he recorded statements of other witnesses. He arrested the accused. He seized the motorcycle of the accused. He collected bonafide certificate of the victim girl showing her date of birth.

[6] It was transpired in the investigation that at the time of the incident, the victim girl was children, below the age of 18 years and the accused outraged her modesty and committed sexual harassment upon her. Hence, on completion of the investigation, he submitted chargesheet against the accused under Section 354 read with Sec.34 of the IPC and under Sections 8 and 12 of the POCSO Act.

[7] My learned Predecessor framed Charge (Exh.10) against the accused under Sections 354 read with Sec.34 of the IPC and under Sections 8 and 12 of the POCSO Act, 2012. Particulars of the offences were read over and explained to the accused to which they pleaded not guilty and claimed to be tried.

[8] Statement of the accused under Section 313 of the Code of Criminal Procedure were recorded. They have denied

the allegations made by the prosecution. According to them, they had disputes with the family of the victim girl on account of money. Therefore, they have been falsely implicated in this matter.

[9] Following points arise for my determination. I have recorded my findings thereon for the reasons stated below :-

Sr. No.	Points	Findings
1.	Whether prosecution proves that the accused persons in furtherance of their common intention assaulted or used criminal force to the victim girl and thereby outraged her modesty ?	Not proved.
2.	Whether prosecution proves that the accused persons sexually assaulted the victim girl ?	Not proved.
3	Whether prosecution proves that the accused physically contacted and advanced involving unwelcome and explicit sexual overtures to the victim girl and thereby caused her sexual harassment ?	Not proved.
4.	What Order ?	Accused are acquitted.

REASONS

Point Nos.1 to 3 :-

[10] To attract the provisions of POCSO Act, prosecution must prove that at the time of incident victim girl was “*child*”. As per Section 2(d) of the POCSO Act “*child*” means any person below the age of 18 years.

[11] “S” (PW1) is the victim girl. She in her evidence she states that her birth date is 25.04.2002. However, while recording statement before the police she did not mention her date of birth.

[12] To prove the age of the victim girl, the prosecution has mainly relied upon evidence of Chandrakant Gavali (PW2), the Headmaster of the school wherein the victim girl was admitted in 6th Standard. He states that the victim girl took admission in their School in 6th standard. As per the School record, birth date of the victim girl is **25.04.2002**. To support this contention, Chandrakant Gavali (PW2) has produced on record bonafide certificate at (Exh.33) of the victim girl.

[13] In his cross-examination, Chandrakant Gavali (PW2) has admitted that at the time of admission of the victim girl in the said School he was not working there.

[14] It is well settled that date of birth in the General Register of the School, has no evidentiary value unless the person who made the entry or who gave the birth date, is examined. Therefore, evidence of Chandrakant Gavali (PW2) and Bonafide Certificate (Exh.33) is not sufficient to prove the date of birth of the victim girl.

[15] In the case of **Pintu Kalidas Jambhule Vs. The State of Maharashtra Criminal Appeal No.225/2017**, decided by the **Hon’ble High Court of Bombay (Bench at Nagpur)**

dated 13.03.2018, in Para No.9, the Hon'ble High Court observed thus :-

9. Shri Rai invites my attention to a Division Bench judgment of this Court Deepak s/o. Jitendra Sawant Vs. State of Maharashtra 2017 ALL MR (Cri) 2058 and in particular to the following observations:

"8. The First Information Report in the present case was lodged on 2.4.2013. There is no whisper in the First Information Report about the date of birth of prosecutrix, though she states her age as 14 years. She gave her date of birth during her evidence recorded on 1.9.2014 as 16.3.1999. The offences alleged to have been committed as per FIR (Exh.29) and printed FIR (Exh.30) were between March-2011 and 26.3.2013. Till the evidence of prosecutrix was recorded before the trial court, she never disclosed her date of birth. Investigating Officer did not bother to collect the birth certificate, school certificate or any other cogent material to indicate that date of birth of prosecutrix was 16.3.1999."

"9. Needless to state that provisions of PCSO Act are stringent in nature. The degree of proof is heavy and prosecution was under legal obligation to establish age of prosecutrix clearly showing that at the time of incident, prosecutrix was "child" within the meaning of the provisions of PCSO Act. There is nothing on record to prima facie indicate that investigating officer made genuine efforts to get the proof of age of prosecutrix - Trial Court placed reliance on the solitary statement of prosecutrix in evidence for the first time to hold the prosecutrix as a "child" within the meaning of the Act. We are afraid that in the absence of conclusive proof of age of prosecutrix, which was easily available to the prosecution, reliance can be placed on a singular statement of prosecutrix, who claims her date of birth as 16.3.1999, for the first time in the course of evidence recorded in the court. If

statement of prosecutrix regarding her date of birth goes away nothing remains on record to show the age of prosecutrix and in such a situation, accused could not have been convicted for the offences punishable under the PCSO Act, 2012."

PW. 10 is the Head Master of Zilla Parishad Higher Primary School, Bhadurni who has deposed that the date of birth of the victim is recorded as 16.3.1999 in the admission register as is evident from entry 2015 (Exh. 52). PW 2 admits that the entries are taken on the basis of the previous leaving certificate. The document on the basis of which the entry is taken is not produced. Exh.52 reveal that the victim was admitted in the School in the 5th standard. The birth certificate, which is best possible evidence, is not produced. The prosecution has failed to prove beyond reasonable doubt, that the victim was less than 18 years of age when the alleged incident occurred.

In the light of the discussion supra, I have no hesitation in holding that the prosecution has failed to prove offences under section 363, 366, 376(i)(j)(n) of IPC and offence under section 5 read with section 6 of POCSO Act."

[16] In the case of **Mahadev Rambhau Khodave Vs. State of Maharashtra Appeal No.1497 of 2019** decided by the Hon'ble High Court of Bombay dated 01st September, 2021, the Hon'ble High Court made reference of the judgment of the Hon'ble Supreme Court in the matter of **Alamelu Vs. State** and in para Nos.9 and 10 the Hon'ble High Court observed thus :-

9. In **Alamelu & Anr. (supra)** the Hon'ble Supreme Court has observed that the date of birth mentioned in the Transfer Certificate

would have no evidentiary value. In the absence of the material on the basis of which the age was recorded or unless the person who made an entry or who gave the date of birth is examined. In the instant case, the school leaving certificate records the date of birth as 04.02.2001. The Certificate (Exh.30) also reveals that the prosecutrix had taken admission in the said school on 15.06.2016 i.e. after the date of the alleged incidence. The Certificate was procured on 27.07.2016 i.e. more than a year after the incident. The evidence of PW7 Ankush More, the Junior Clerk of Sant Tukaram Vidyalaya, indicates that as per the School records the prosecutrix had earlier attended the Zilla Parishad Prathamik School, Digrajwadi. He has further admitted that whenever a student is admitted in the first standard, birth certificate is taken from her parents. He has further admitted that Sant Tukaram Vidyalaya had not taken birth Certificate when the prosecutrix was admitted in Sant Tukaram Vidyalaya School at Lohogaon.

10. The evidence of PW7 thus reveals that the birth date of the prosecutrix was not recorded in the School Leaving Certificate (Exh.30) on the basis of the Birth Certificate. The witness has not explained as to on what basis the birth date of the prosecutrix was recorded as 04.02.2001. The prosecution has not examined the Headmaster of the school or the person who had issued the School Leaving Certificate at Exhibit 30 or the person who had recorded the date of birth in the said Certificate. The prosecution has also not examined the person who had disclosed the date of birth of the prosecutrix to the

School Authorities. In the absence of such evidence, the School Leaving Certificate (Exh.30) has no evidentiary value.

[17] The document in respect of the birth date of the victim girl, is the Bonafide Certificate (Exh.33) issued by the School, where the victim girl was admitted in 6th standard. The prosecution has not produced on record birth certificate of the victim girl, on the basis of which her birth date was recorded in the School Record. The prosecution has not produced any medical evidence as regards to ossification test of the victim girl which would have helped to ascertain the age of the victim girl. Therefore, the evidence adduced on behalf of the prosecution as regards to the age of the victim girl, is not conclusive. Thus, the prosecution has failed to adduce legal evidence to establish that at the time of the incident the victim girl was “*child*” as defined in Section 2(d) of the POCSO Act. Hence, the provisions of the POCSO Act, are not applicable in this case.

[18] Victim girl “S”, (PW1) in her examination-in-chief has stated that, on 14.01.2017 she along with her female friend – R had been chitchatting in front of their house. At that time, accused – Ganesh along with another accused came there and accused – Ganesh said that how beautiful items are sitting in their lane and then he attempted to kiss the victim girl. He pressed her breast. Therefore, she shouted for help. Therefore, her mother and one Sangita Aunt came there, however by that time both the accused fled away.

[19] Though the victim girl (PW1) in her examination-in-chief deposed as above, in her cross-examination she has admitted that the accused were residing in the same vicinity and she had good relations with them. However, her mother misunderstood their relations and scolded on her and also asked her to lodge complaint, therefore, she lodged this complaint. Lastly, she categorically admitted that on that day the accused did not come near her, however due to some misunderstanding she lodged FIR. Thus, the victim girl at her own vanished her evidence given in examination-in-chief.

[20] Prosecution has examined “M” (PW4), mother of the victim girl. She has stated that on that evening the victim girl was sitting in front of their house. She came out after hearing shouting of the victim girl, however, by that time both the accused fled away. Thus, “M” (PW4) did not witness the incident when eventually happened. Hence, she cannot be said to be an eye-witness to the incident. Therefore, her evidence is not helpful to prove the guilt of the accused persons.

[21] Sangita (PW5) is the said Aunt to whom the victim girl shouted for help. Sangita (PW5) states that she does not remember when the incident took place. It did not happen that the victim girl was sitting in front of her house and two boys outraged her modesty. Thus, she turned hostile to the prosecution and deposed nothing incriminating against the accused persons.

[22] PSI – Tayade (PW6) is the Investigating Officer. He states that he visited to the spot of the incident and prepared panchanama of the spot vide Exh.63. Shivaji (PW6) is the panch witness of spot panchanama (Exh.63). He turned hostile to the prosecution and denied that police prepared panchanama of the spot in his presence. In the result evidence of PSI – Tayade (PW6), the Investigating Officer remained uncorroborated on the point of preparation of the spot panchanama.

[23] Evidence of PSI – Tayade (PW6) further shows that he recorded statements of witnesses and seized motorcycle of the accused. However, on the background of none corroborative evidence of the victim girl and other witnesses his evidence appears to be mechanical one and it is not sufficient to prove the guilt of the accused persons.

[24] Moreover, the prosecution has not examined female friend - “R” of the victim girl. As per the prosecution case said “R” was accompanied to the victim girl at the time of incident and she witness the incident when eventually happened. In the circumstance, non examination an important eye-witness on the part of the prosecution is certainly fatal to the prosecution case.

[25] On the basis of above evidence, I can safely conclude that the prosecution has failed to prove beyond all reasonable doubts the guilt of the accused persons for the offence punishable under Section 354 read with Sec.34 of the IPC and under Sections 8 and 12 of the POCSO Act, 2012. I, therefore, answer Point Nos.1 to 3 in the negative.

Point No.4:-

[26] As mentioned above, the prosecution has failed to prove the guilt of the accused for the offence punishable under Section 354 read with Sec.34 of the IPC and under Sections 8 and 12 of the POCSO Act, 2012. Hence, the accused are entitled for acquittal. I, therefore, in answer to Point No.4 pass the following order:-

ORDER

(1) Accused Nos.(1) **Ganesh Namdev Bhalerao** and (2) **Manoj Santosh Patil** are hereby acquitted for the offences punishable under Sections 354 read with Sec.34 of the Indian Penal Code and under Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, vide Sec.235(1) of the Code of Criminal Procedure.

(2) Bail bonds of the accused stands cancelled.

(3) The accused shall furnish P.R.bond of Rs.15,000/- (Rs. Fifteen Thousand only) each and

surety of like amount in compliance of provisions U/Sec.437-A of the Code of Criminal Procedure.

(4) The accused No.(1) **Ganesh Namdev Bhalerao** is in jail. He be set at liberty forthwith if not required in any other case.

(5) Issue letter accordingly.

(S.B. Bahalkar)

Additional Sessions Judge,
Gangapur

Date – 18.03.2026

To be Continued on Page No.15...

Annexure - "A"**Part 'C'****(Para 44(iii) of Chapter VI of Criminal Manual)****LIST OF PROSECUTION /DEFENCE/COURT WITNESSES****A. Prosecution :-**

RANK	NSE	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
(1)	"S" (PW1) – Exh.27	The victim girl/informant.
(2)	Chandrakant Gavali (PW2)- Exh.32	Head Master of the School of the victim girl.
(3)	Shivaji Bhende (PW3) – Exh.36	Panch witness
(4)	"M" (PW4) – Exh.54	Mother of the victim girl.
(5)	Sangita (PW5) – Exh.55	Mother of the female friend of the victim girl
(6)	API – Tayade (PW6) – Exh.62	Investigating Officer

B. Defence Witnesses, if any :-

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW1	–	–

C. Court Witnesses, if any :-

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
CW1	-	-

LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS**A. Prosecution :-**

Sr. Nos.	Exhibit Number	Description
(1)	PW1 – Exh.28 and 29	FIR and statement of the victim girl recorded under Sec.164 of the Cr. PC.
(2)	PW2 – Exh.33	Bonafide certificate of the victim girl
(3)	PW6 – Exh.63	Spot panchanama
(4)	PW6 – Exh.64 and 65	Panchanama of the memorandum of accused – Manoj and Panchanama of seizure of the motorcycle
(2)	PW6 – Exh.66	Portion mark – A of the statement of the Sangita (PW5)

B. Defence :-

Sr. Nos.	Exhibit Number	Description
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C. Court Exhibits :-

Sr. No.	Exhibit Number	Description
(1)	10	Charge

(2)	11	Particulars of the accused
(3)	68 and 69	Statement of the accused recorded under Sec.313 of the Cr.P.C.

D. Material Objects :-

Sr. No.	Exhibit Number	Description
-	-	-

Date – 18.03.2026

(S.B. Bahalkar)
Additional Sessions Judge,
Gangapur